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Attorneys for Plaintiff RICARDO BERMUDEZ VAQUERO,
on behalf of herself and all others similarly situated

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

RICARDO BERMUDEZ VAQUERO,)
on behalf of himself and all others)
similarly situated,)

Plaintiff,

v.

ASHLEY FURNITURE
INDUSTRIES, INC., a Wisconsin
Corporation; STONELEDGE
FURNITURE LLC, a Wisconsin
Limited Liability Corporation, and
DOES 1 through 10, Inclusive,

Defendants.

Case No.: 2:12-cv-08590-PA-MAN

CLASS ACTION

**PLAINTIFF'S EX PARTE
APPLICATION TO CONTINUE
DATE TO FILE FOR
CLASS CERTIFICATION
(LOCAL RULE 23-3), OR IN THE
ALTERNATIVE, COMPEL
DISCOVERY**

1 **TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2 **PLEASE TAKE NOTICE OF THE FOLLOWING:**

3 Plaintiff RICARDO BERMUDEZ VAQUERO, on behalf of himself and all
4 others similarly situated ("Plaintiff") applies *ex parte* to this Court to waive and/or
5 continue the Local Rule 23-3 requirements for the filing of Plaintiff's Class
6 Certification Motion currently set for January 3, 2013.

7 Good cause exists to grant this Application in that, despite the best efforts of
8 counsel, the discovery necessary to bring and defend a motion for class
9 certification cannot reasonably be completed in time to file the motion on January
10 3, 2013.

11 Plaintiff filed his complaint on August 24, 2012 in California state court on
12 behalf of himself and Defendant's Sales Associates employed during the previous
13 four years. On October 5, 2012, Defendants removed the case to this Court.
14 Plaintiff's Motion for Remand was denied without hearing. Counsel conducted the
15 Early Meeting on November 15, 2012, and submitted their Joint Report on
16 November 26, 2012.

17 On September 20, 2012, Plaintiff served an initial set of Special
18 Interrogatories (two interrogatories) and Requests for Production of Documents
19 (four requests) to each of the two Defendants in the state court action. Defendants
20 were not obligated to respond after removal.

21 On November 8, 2012, the parties submitted a Joint Stipulation to Continue
22 Class Certification Filing Date. The Court denied the Joint request.

23 During the Early Meeting of Counsel conducted on November 15, 2012, the
24 parties agreed Plaintiff would serve a second set of Interrogatories and Requests
25 for Production of Documents to Defendant Stoneledge Furniture LLC only. The
26 discovery was served via electronic mail on November 15, 2012 and Stoneledge's
27 responses are currently due December 18, 2012.

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1 One of Plaintiff's initial interrogatories requests contact information for
2 the putative class. Defendant agreed to produce the names and addresses for the
3 putative class, subject to the entry of a protective order, by December 7, 2012. The
4 parties drafted a Joint Stipulation requesting a Protective Order be entered and
5 filed it with the court on November 28, 2012. As of the filing of this Ex Parte
6 Application, the Court has not acted on the proposed Order,

7 Plaintiff also served a Notice of Deposition of Defendant Stoneledge
8 Furniture LLC on that date. The deposition was noticed for November 30, 2012
9 but Defense advised Plaintiff that a witness could not be produced on that date.
10 The parties met and conferred on available dates but all the necessary depositions
11 could not go forward before the January 3, 2013 Local Rule 23-3 class certification
12 filing date.

13 Plaintiff agreed to significantly reduce the number of PMK categories of
14 testimony, which reduced the number of depositions needed by two or three. Even
15 with these compromises by Plaintiff, it is not possible for even the limited number
16 of witnesses to be produced in reasonable time to allow the depositions to be taken,
17 transcripts to be obtained, and the information reviewed and incorporated in a
18 Motion for Class Certification. Defendant was able to agree to produce one witness
19 on December 21, 2012. The earliest date the other witness can be made available
20 is Saturday, December 29, 2012. Defendant has requested Plaintiff be made
21 available for deposition before the motion for class certification is filed.

22 Cohelan Khoury & Singer's office closes each year for the holidays and will
23 close on December 24, 2012 and not re-open until January 2, 2013. Co-counsel
24 Kevin Barnes has a pre-paid family vacation scheduled for December 24, 2012
25 through January 6, 2013. Co-counsel Raphael Katri has a pre-paid vacation
26 scheduled for December 27, 2012 through December 30, 2012.

1 Based on all these factors, Plaintiff requests the Court continue the date for
 2 filing Plaintiff's Class Certification Motion imposed by Local Rule 23-3 for ninety
 3 (90) days.

4 The parties are informally meeting and conferring prior to receiving
 5 Defendant's responses in an attempt to work through any discovery issues as soon
 6 as possible. Because the responses are not due until December 18, 2012 and with
 7 the upcoming holidays, any anticipated discovery motions cannot be filed until
 8 after the Local Rule 23-3 class certification filing deadline, for several reasons,
 9 including that the joint stipulation required by Local Rule 37-1 may take more than
 10 a week to prepare.

11 The parties have met and conferred telephonically and Defendant does not
 12 oppose this Ex Parte Application. Plaintiff sent an email to Defendant's counsel on
 13 December 12, 2012, at 11:34 a.m. advising Plaintiff's ex parte application was
 14 being filed today, and a second email at 2:01 p.m., and reminding them an
 15 opposition is due 24 hours after Plaintiff's ex parte filing.

16 This request is based on this Application, the memorandum of points and
 17 authorities attached hereto, and the supporting Declaration of Jeff Geraci.
 18

19 Dated: December 12, 2012 **COHELAN KHOURY & SINGER**
 20 **LAW OFFICE OF KEVIN T. BARNES**
 21 **LAW OFFICES OF RAPHAEL A. KATRI**

22 By: /s/ Jeff Geraci
 23 Michael D. Singer, Esq.
 24 Jeff Geraci, Esq.
 25 Attorneys for Plaintiff
 26 RICARDO BERMUDEZ VAQUERO
 27 and the putative class
 28